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10/712,677	11/13/2003	Christopher W. Kempin	RSW920030198US1	9089

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EXAMINER
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/712,677  
Filing Date: November 13, 2003  
Appellant(s): KEMPIN ET AL.

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Bryan W. Bockhop  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed May 02, 2008 appealing from the Office action mailed 10/02/2007.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 11 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

Regarding claims 1 (line 13) and 11 (line 14), the language of claims where the gateway device is “capable of not” sending state change. It is unclear how this limitation is intended to limit the claimed gateway device. All gateway devices are “capable of not” sending state change?

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device.

Regarding claims 2-6, they are rejected for being dependents on a rejected claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Childress et al. (US Pub. 2004/0010716).

Regarding claims 1, 7, 10 and 11, Childress et al. teach a system and a method for monitoring the integrity of a plurality of endpoints and a communication channel between the plurality of endpoints and a gateway device (abstract; ¶ 032), comprising: an endpoint having a monitoring application for monitoring the integrity of the endpoint (abstract, “health monitoring agent”), the monitoring application at a predetermined time sending a periodic signal through a communication channel to the gateway device indicating the integrity of the endpoint (¶ 092; ¶ 112, “predetermined time intervals”); a server having a centralized database listing the status of the endpoint (abstract); and a gateway device in communication with the server and with the endpoint (¶ 112), the gateway device including a monitored list listing the status of the endpoint in communication with the gateway device (¶ 099, 0117, 0121) the gateway device being

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capable of selectively sending a state change message to the server if the gateway device fails to receive a periodic signal from the endpoint and if the status of the endpoint is either in a Healthy state (§ 096), which indicates the endpoint is functioning properly, or a Trouble state (§ 096), which indicates the endpoint has failed once, the gateway device further being capable of not sending the state change message to the server upon a failure to receive the periodic signal from the endpoint if the status of the endpoint is in a Removed state (§ 096, "Fatal").

Regarding claim 2, Childress et al. teach the system of claim 1, wherein the periodic signal is sent through a data channel connecting the endpoint and the gateway (abstract; § 112; § 114; § 115).

Regarding claim 3, Childress et al. teach the system of claim 1, wherein the status of the endpoint is set to the Trouble state when the gateway device fails to receive the periodic signal from the endpoint and the status of the endpoint is in the Healthy state (§ 096, "Harmless"; § 117, "Normal").

Regarding claim 4, it is inherent to one of ordinary skill in the art that Childress et al. teach the system of claim 1, wherein the status of the endpoint enable to set for removal when the gateway device fails to receive the periodic signal from the endpoint once the status is update from Critical state to Fatal state.

Regarding claim 5, Childress et al. teach the system of claim 1, wherein the centralized database has a plurality of entries (abstract; § 017), each entry being associated with one endpoint, the status of the endpoint (abstract), and the gateway device associated with the endpoint (abstract; § 092).

Regarding claim 6, Childress et al. teach the system of claim 1 further comprising a timer (§ 119), wherein the timer is associated with the endpoint.

Regarding claim 8, Childress et al teach the method of claim 7, further comprising the steps of: determining if a timer associated with the endpoint has expired (§ 119, "exceeded"; if the timer has expired, determining the status of the endpoint associated with the timer (Table 2); if the status of the endpoint is the Healthy state (§ 096), setting the status of the endpoint to the Trouble state; if the status of the endpoint is the Trouble state (§ 096), setting the status of the endpoint to the Removed state (§ 096, "Fatal"); and resetting the timer (§ 094).

Regarding claim 9, Childress et al. teach the method of claim 7, further comprising the steps of " receiving a configuration signal from the endpoint (§ 111); determining if the endpoint is listed in the monitored list (§ 111-115); and if the endpoint is not listed in the monitored list, adding the endpoint to the monitored list and transmitting a configuration signal to the server (abstract; § 111-115).

#### **(10) Response to Argument**

**I (Issue):** Did the Examiner err in concluding that claims 1-6 and 11 were rejected under 35 U.S.C. § 112, for failing to define the invention?

- In the first argument, the Appellant states that *"the Specification clearly indicates that an endpoint can be in one of only three states: Healthy, Trouble or Removed. (See, e.g., FIGS. 2, 3 and Specification, § [0018]). The independent claims recite that, upon failure to receive a periodic signal from an endpoint device, the gateway device is configured to send a state change message when the endpoint is in either the*

*Healthy or the Trouble state. Otherwise, when the endpoint is in the Removed state, the gateway device is configured not to send the state change message. Each possible state is addressed and an action (or inaction) is associated with each state. When taken in its full context, the meets and bounds of this limitation are perfectly clear. Furthermore, the MPEP makes it clear that this type of limitation is perfectly acceptable. In re Barr, 444 F.2d 588 (CCPA 1971) held that "the limitation used to define a radical on a chemical compound as 'incapable of forming a dye with [an] oxidizing agent' although functional, was perfectly acceptable because it set definite boundaries on the patent protection sought." MPEP § 2173.05(g). Analogously, the amended claims make it clear that the gateway is incapable of sending a state change message when the endpoint is in the Removed state and, thus, sets definite boundaries on the patent protection sought.*

In the first argument, the Appellant's argument has not been found to be persuasive. While the Appellant has cited out that MPEP § 2173.05(g) makes it perfectly acceptable to claim '*incapable of sending a state change message when the endpoint is in the Removed state*', "capable of not sending a state change message" is analogously **different** from "incapable of sending a state change message" as claimed. For this reason, the rejection under § 112 is sustained.

- In the second argument, the Appellant states that "*the rejected claims include elements not disclosed in Childress. Applicant, in its Response to the final Office Action, pointed out that the cited passage of Childress (§ [0096]) fails to disclose the limitation that requires the gateway device not to send the state change message to*



*the server when the status of the endpoint is in the Removed state and explained why.*

*Paragraph [0096] of Childress merely states: Event Severity--This string corresponds to the TEC severity levels (HARMLESS, WARNING, CRITICAL and FATAL) and must always be in uppercase. This TEC severity level is the TEC severity level to which the incident severity level maps to; While the cited paragraph uses the word "FATAL," there is no indication in this paragraph (or anywhere else in Childress) that an endpoint being in a Removed state results in a state change message being suppressed by the gateway device. Any assertion that use of the term "FATAL" means suppression of a state change message is mere speculation, and is certainly not sufficient to support a § 102 rejection. In response to this argument, the Advisory Action states: Applicant argues healthcheck modules that are applied to manage nodes (not endpoints) in a program will not run if a managed node is down. Applicant tries to differentiate between 'managed nodes' and 'endpoints.' Response: There is no distinction between a "manage node" and an "endpoint." A manage node could be an end user or a thin client station, therefore it is an endpoint... This statement completely fails to address the question of whether Childress discloses the limitations of the gateway device being configured to send a state change message when the endpoint is in either the Healthy or the Trouble state and being configured not to send a state change message when the endpoint is in the Removed state. Childress simply does not disclose these limitations and the final Office Action, along with the Advisory Action completely fail to demonstrate otherwise."*

The Appellant's second argument has not been found persuasive. In fact, Childress et al. teach that once the device has failed and a FATAL TEC event has been sent, there will no more messages since this is the highest threshold (§¶115-116) and there is no additional health check or signal need to be processed if the node is down (§¶ 0061, lines 3-8). In additional, it is predictable to produce the same result when the FATAL TEC event has been sent, no more message is necessary send an indication of the state change as the present application claimed. In response to the argument of the distinction between a "manage" node and an "endpoint," the mechanism as disclosed by Childress et al. provides monitoring the managed nodes and for distributed monitoring of endpoint device with the healthcheck engine installed on the endpoint devices (abstract; §¶ [0019]) to effectively monitor the endpoint devices even without the managed nodes, in some instances - the endpoint devices could still be able to response to the state inquiries. Thus, the rejection is sustained.

Applicant's arguments filed on Aug. 13, 2007 have been considered, but they are not persuasive.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

TuanKhanh Phan (GAU 2163)

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